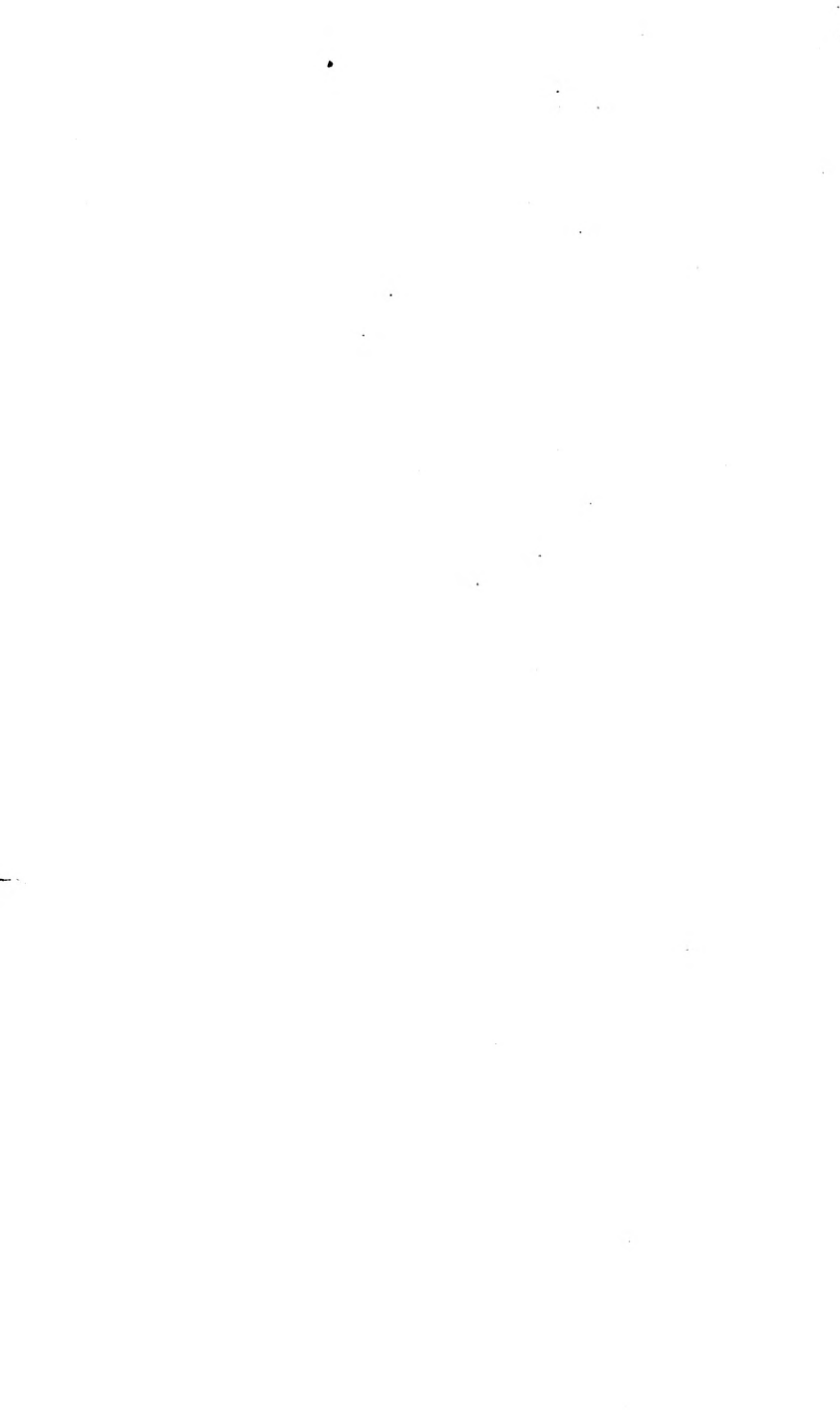


E
458
.1
D54









"FREEDOM IS ALWAYS WITHIN THE UNION."
DESPOTISM FOLLOWS ITS DOWNFALL.

SPEECH

OF

HON. H. L. DICKEY,

ON THE

DUTY OF OHIO IN THE PRESENT CRISIS :

THE QUESTION BEING UPON THE ADOPTION OF RESOLUTIONS ASKING
CONGRESS TO CALL A CONVENTION OF THE STATES.

DELIVERED IN THE

OHIO HOUSE OF REPRESENTATIVES MARCH 20, 1861.



COLUMBUS:

RICHARD NEVINS, PRINTER.
1861.

E 456
1
D

HALL OF THE HOUSE OF REPRESENTATIVES, }
Columbus, March 20, 1861. }

HON. H. L. DICKEY:

Sir:—The undersigned, Members of the House of Representatives, having listened with pleasure to your remarks upon the passage of Senate Joint Resolution No. 37, do respectfully ask a copy of the same for publication.

Yours truly,

JAS. M. WHITE,
W. B. WOODS,
WILLIAM PARR,
J. E. MYERS,
W. J. FLAGG,
GEO. S. CONVERSE
C. HUGHES,
PATRICK RODGERS,
JOHN SCHIFF,

JAS. M. STOUT,
S. W. SHAW,
JOHN WESTCOTT,
R. HUTCHESON,
T. K. JACOBS,
J. E. CHASE,
G. W. ANDREWS,
J. F. WRIGHT.

S P E E C H

OF

HON. HENRY L. DICKEY,

ON THE

DUTY OF OHIO IN THE PRESENT CRISIS.

MR. SPEAKER: It has been with unfeigned anxiety, that the Democratic side of this House has urged the passage of these resolutions for weeks passed. We regarded an appeal to the people as the only hope of the Union, and so regard it still. And now, that we have seen secession put in operation, the Peace Conference prove a failure, Congress unequal to the emergency, and Lincoln inaugurated, there seems to be a hope that the people may have an opportunity of averting the sad condition of impending and continued dissolution. I shall not attempt to draw a picture of the horrors of disunion and civil war, for every American can feel better than I can portray the utter destitution and misery of such a condition—a stubborn, unwieldy fact, stares us in the face, and action, not imagining and portraying evils or blessings, is our duty.

We have a duty to perform, not only in relieving our imbecile agents as far as we can, but in clearing our own skirts as a State, to which I shall presently direct my remarks. But now, while yet there is hope, let us, with one voice, ask a convention of States—let us call upon our sister States to ask it—let the honest, intelligent, Union-loving people consider the matter, and come together and accomplish that which politicians can never do.

Let those who have been deceived into the belief that there was no danger of dissolution, that free territory, free homes, and free farms should be theirs, without cost, when, in truth, under that delusion they have been led to occupy a position where their chances are to shoulder arms and bleach their bones upon the battle field in civil war, come together and strike hands with those of every other party and State in friendship and determined unity.

Will any man say the people favor disunion? Will any one say that the people will stop to weigh a mere party platform against the value and blessings of the Union? Sir, the laboring man, the mechanic, the farmer, the merchant, all have a higher appreciation of the peace, the blessings and glory of the country than those in power, whose hearts have become callous by crimination and recrimination.

Trust the intelligence and integrity of the people, and if it is not already too late, all will be saved; refuse this and all is lost.

Does it become the Legislature of Ohio to sit doggedly dumb, disregarding petition after petition that has been poured in upon us from the people? We are bound to respond to these demands. We are by all that is honorable, bound to respect and comply with their prayers.

But gentlemen say the Constitution is good enough—States have no right to secede. Grant it—the Constitution and the right of secession is not debatable now—it is too late for this—the fact exists. States have already seceded, so far as in their power, and the whole South declare, in answer to the New York and Ohio Resolutions, that they will resist force with force.

Do you say they must be coerced, conquered and brought back at the point of the bayonet? Do you call this self-preservation? I say it is self-destruction—while concession and compromise is the spirit of the people, the spirit in which our fathers formed the government, and the only spirit in which it can be preserved.

But, sir, the passage of these resolutions is not the only thing to be done by the State of Ohio. The question of slavery is

undoubtedly the original source of our present tottering condition. The institution denounced as a moral, social and political evil, as it exists, is older than the government, and is so interwoven into our constitution and laws that, while it does exist, and the Union lasts, duties with regard to it are imposed and devolve upon every State, which none can disregard without dishonor to herself and disloyalty to the general government. Therefore, I remark, Ohio has more than the passage of these resolutions to perform, if she would do her whole duty to the country, and place herself right upon the record.

And since there seems to be no formidable opposition to the final passage of these resolutions, I shall confine my remarks principally to what I conceive to be the further duty of our State in regard to her laws.

Unconstitutional laws should not remain upon our statute books in any event. No State should dare to encroach upon the delegated powers of the general government any more than should the general government dare to encroach upon the reserved rights of the States; for it is the duty of the general government to respect and support the rights and authorities of the States, as a part, and no inconsiderable part, of the machinery of this Republic, as well as it is the duty of the States to respect, regard and obey their constitutional obligations to the general government. Both are eminently essential to the welfare of the people, and the success of the system.

The Constitution was framed to meet a diversity of interests. It was not designed for the wants of the North, or the South, but was intended for the general benefit of both. It was built for the noblest structure of government that time has ever witnessed. It was intended for liberal minds, kind hearts, good Christians and loyal citizens. It was designed for freedom of thought and speech, liberty of conscience, and the glory of God. It was conceived in the watchings, toils and struggles of the Revolution, and was born amid the wisdom and prayers of our fathers.

It contains no sentence that was not analyzed—no syllable that was not weighed.

Every section was taken into its embrace—every interest was carefully cared for.

To us it has descended, with all its magnificent proportions, but not unscared by the ruthless hands of demagogues. To us it remains to sustain and protect it, together with the glorious Union under it.

We can trespass upon no fraction of this Constitution and do this. We cannot sever the most minute shred from it, and not be recreant to our duty.

Unconstitutional statutes should not exist in any event; and I claim that it is highly proper at this, "the winter of our discontent," that we should not only call for a convention of States, but that such a statute, touching fugitives from service or labor, should be repealed, and that the statute book of Ohio may be made pure, clean and entirely free from the smell of "personal liberty bills" or unconstitutional kidnapping laws, that we may the more earnestly and emphatically call.

Especially proper is it that we should search carefully our books for laws of this description, when day after day seems to be weakening and snapping the ties of our Union in consequence partly of laws of this nature.

Especially is it our duty to scan closely our own acts, before charging disloyalty to their constitutional obligations upon any of our sister States, and making threats of "coercion" when we cannot say our own hands are clean. And just here, sir, I cannot but congratulate myself with others upon this floor, that we did not vote for the "coercion" contained in the eighth of the celebrated Ohio crisis resolutions. Gentlemen say that Virginia, Kentucky and Tennessee laughed at our power to coerce, and therefore they favor the immediate arming of the State. I can say to gentlemen, they need not go so far as Virginia to see themselves laughed at. Members on this floor laughed at them; the State of Ohio laughed at them; and Gen. Bierce—when he petitioned this body for the privilege of drilling the convicts in our Penitentiary—if he did not laugh, at least shed a very broad and bland smile upon them.

But sir, whether we have "power and resources," or not,

it illy became the dignity of the General Assembly of the State of Ohio to pledge them, for the purpose of enforcing constitutional obligations upon a sister State, when she herself is recreant to that Constitution upon the very point which has been instrumental in bringing us to the perilous condition we now occupy as a nation—to the very brink of dissolution. Yea, to the verge of that frowning precipice, beneath whose black brow lies that unfathomable abyss into whose depths the great Webster dared not permit himself to look. Upon the very crisis of affairs, at which the great commoner of Kentucky declared the strength of the government ought to be tested. Into that very position, of which the Father of his Country warned us to beware, and where designing politicians have placed us—parties characterized by geographical discriminations.

Every patriot—every soul which has enjoyed the blessings and security of this happy form of government—cannot but feel a terrible alarm at the condition in which we behold the freest and mightiest nation upon which God's golden day has ever shone.

It was said by a statesman, that there are some animals that live best in fire ; and there are some men who delight in heat, smoke, combustion—and even general conflagration. They do not follow the things which make for peace. They enjoy only controversy, contention and strife ; and I am afraid, Sir, there is some such material upon the floor of this House. Indeed, if we may judge from former occasions, we know there is. They never, I am fearful, will meet the issue fairly. They deal too much in imagination. They all think, work and act as if they expected to ride upon some popular wave to glory—to an elevated and distinguished political position. They seem afraid to kick against the dogmas of a party platform, for fear of being hurled back, or lost in some political whirlpool. They catch, like a drowning man at a straw, for every bill or resolution which has about it the smack of preventing the return of a fugitive slave to his legal owner, and frown like a thunder-cloud if one is introduced to punish slave stealing. Poor hopes for union, when such spirits rule.

"A time like this demands

Strong minds, great hearts, *true faith*, and ready hands;
Men whom the lust of office does not kill;
Men whom the spoils of office cannot buy;
Men who possess opinion and a will;
Men who have honor and who will not lie;
Men who can stand before a demagogue
And damn his treach'rous flatteries without winking."

A time like this demands that we should first do our duties before calling upon others to do theirs. I am speaking of the duty of Ohio in this crisis. Demands upon others to fulfill their constitutional obligations, come from us with but a bad grace while we have upon our statute-book a law inflicting a severe penalty upon a master who may retake his fugitive servant—an owner who may recapture his fugitive slave. The owner has a constitutional right to retake his runaway slave; and he can no more *kidnap* him than an owner can *steal* by retaking his stray horse upon the highway. He cannot kidnap his fugitive slave from the State of Ohio, any more than he can kidnap him from one county to another in the State of Kentucky. Yet your law would punish him for exercising a right guaranteed to him by the Constitution. The fugitive is as much the property of his master, when he has escaped into Ohio, as he is in a slave-holding State. His escape does not change his relation to his owner. He is a slave still. And this arises from the second section of article four of the Constitution, which says:

"No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due."

By the common law this was not so, but when a slave escaped into a country or State where slavery did not exist, he was free, or, as the common law writers say, when his feet rest upon free territory, his shackles fall from him; and this clause of the Constitution was placed there to meet the common law doctrine, and enable the slave holding States to retain their peculiar property in security. Without it, thus understood, no consti-

tution could ever have been made or union formed. It was a concession upon the part of the free and prospectively free States, and is now a binding obligation upon them, and one which they cannot violate by statutes of the nature of the second section of our present kidnapping law with impunity. To violate that clause of our Constitution, is to scar the venerable shield of our freedom and Union, as much as to violate any other clause. It is to weaken our strength, disband our unity, discourage conservatism, and destroy all hope. It is the operation of "sapping and mining;" it is battering against one of the corner-stones of the temple of American liberty; it is, in short, abolitionism.

But what are the provisions of this section?

It requires the person claiming a fugitive from service or labor to first take such fugitive "before the court, judge or commissioner of the proper circuit, district or county having jurisdiction according to the laws of the United States in cases of persons held to service or labor in any State escaping into this State, and there, according to the laws of the United States, establishing by proof his or their property in such person."

Now, by what right or authority, I ask, does the State of Ohio undertake to thus retard the reprisal of a fugitive?

Is it for the protection of the liberty of free persons? Most certainly not, for the first section amply provides for this, while this second section, as I think, and shall presently show, endangers the liberty of free persons.

Then if it does not operate, and is not for the protection of free persons, *if it have any operation*, (?) it is to delay or retard, and perhaps discharge from "service or labor," the fugitive who has escaped, and is thus in direct conflict with the Constitution, and ought to be repealed.

But, it is asked, how is the owner to assert his "claim?" I answer: "It is asserted by his seizure of his property, and there is no power by any State to interfere with the possession acquired by the seizure or removal of the fugitive to the State whence he fled. This is all against our *notions* of right. We do not recognize the right of property in man," independent of the Constitution and laws of our country. But we cannot, as

loyal citizens, set up our *private notions*, our "*higher law*" notions, against and contrary to the supreme law of the land. This would be violating plighted faith. We are in duty, in honor, and by every tie which binds government to citizen, and citizen to government, bound to obey the law. We give up a part of our natural rights, and support the government, and in return the government protects our persons and property; that is the contract between every citizen and his government, and neither are at liberty to violate.

But to return. It not being in the power of Ohio to enact any statute interfering with the *right* of the owner to his slave, or in any manner changing their relation, and this second section, as admitted by a minority report of the committee on judiciary, upon this subject, not being for the protection of *free persons*, it is certainly unconstitutional and void.

What says that minority report? "That to repeal this second section of the kidnapping act, and limit the provisions of the law to free persons only, would be giving extraordinary and dangerous powers to strangers." Now, I again ask, can there possibly be a statute for the protection, relief or defense of the liberty of any other than a free person?

Would not any other be utterly void, because necessarily for the relief of fugitives, and consequently unconstitutional.

But it further says: "It would be giving strangers unlimited powers over the liberties of persons found within the State, whom the State is under obligations to protect." What! Under obligations to protect "the liberties of" fugitives from service or labor, who have escaped into this State?

I have already shown that the minority does not claim this second section to be for the protection of free persons; then this is precisely what it means, if it means anything, and I respectfully submit, whether the Constitution does not expressly deny the exercise of any such power by any State. No sir, you cannot enact a law for the protection of "the liberties" of fugitives from service. In the case of *Prigg vs. The State of Pennsylvania*, XVI Peters, 540, MR. JUSTICE STORY decided: "The clause (of the constitution above quoted) manifestly contemplates the existence of a positive, unqualified right on

the part of the owner of the slave, which no State law or regulation can in any way qualify, regulate, control or restrain. The slave is not to be discharged from service or labor in consequence of any State law or regulation. Now certainly, without indulging in any nicety of criticism upon words, it may fairly and reasonably be said, that any State law or regulation which interrupts, limits, delays or postpones the right of the owner to the immediate possession of the slave, and the immediate command of his service and labor, operates *pro tanto* a discharge of the slave therefrom.

The question can never be, how much the slave is discharged from, but whether he is discharged from *any* service by the natural or necessary operation of State law or State regulation. If this be so, then all the incidents to the right attach also; the owner must therefore have the right to seize and repossess the slave, which the local laws of his own State confer upon him as property. Upon this ground the court have no hesitation in holding that, under the Constitution, the owner is clothed with authority, in every State of the Union, to seize and recapture his slave whenever he can do it without any breach of the peace or illegal violence.

After referring to the above case, the minority report, as if it had discovered a "nigger in the wood-pile," gravely and exultingly remarks: "But mark, the court does not affirm the right to take the alleged fugitive beyond the jurisdiction of the State where he is found, without proof and without process."

The statute about which we are talking is a State law or regulation; no State law or regulation, say the Supreme Court, can in any way *qualify, regulate, control, or restrain the unqualified right*, on the part of the owner of the slave.

Now, sir, does not this second section undertake to *qualify*? Does it not undertake to *regulate* the *unqualified right* of the owner to repossess the slave? Does it not undertake to *control* or *restrain* from *any* service for *any* length of time, this right of the owner to the *immediate* command of the service of his slave?

I am compelled to the belief that by the time the minor-

ity has answered these questions, there will not be left even a ghost of the "nigger in the wood-pile," and much less of the argument contained in that report.

The doctrine that the relation of the slave to his master remains precisely the same after his escape as it existed in the State whence he left, is, says this minority report, "repugnant to every principle of international law." Now it is evident that this idea ignores the Constitution itself.

Undoubtedly by the common law, as I have already said, every State possessed exclusive jurisdiction with reference to this kind of property, within its own limits, and, if a non-slaveholding State, it was under no obligations to return a fugitive, but on the contrary, he became absolutely a free man when he escaped into its jurisdiction.

But if this were so under the Constitution, the supreme law of the land, why should the State of Ohio, whose "soil recoils at the tread of a slave," undertake to enact a law by which "any person or persons claimed as fugitives," upon proper proof, may be forcibly taken back to slavery.

The State, according to MR. JUSTICE STORY, is not bound as such by the Constitution to carry out the provisions of the fugitive clause; for, he says, it would be an unconstitutional exercise of the power of interpretation, to insist that the States are compelled to provide means to carry out its provisions.

Most assuredly, if the argument of the minority report were true, its author would be far from giving the claimant of a fugitive from service or labor any such privilege as is found in this second section of our kidnapping law.

Thus, he tacitly admits the falsity of his position, and utterly fails to argue down the plain provisions of the Constitution.

But we have another Namby Pamby report upon our tables emanating from a select committee in that small, but respectable body of gentlemen in the other end of the capitol, which presents the strange anomaly of denouncing all judicial opinions as *any authority* to control the action of *this* Legislature, and at the same time undertakes to support his report, for the indefinite postponement of a bill to repeal this same section, by reference to this same authority.

Comment is unnecessary, and perhaps would not be proper here.

But granting the arguments were sound and the statute constitutional; still I maintain it should be repealed as dangerous to the liberties of free men. The free man is better protected without its provisions. The simple constitutional provisions of the section against kidnapping free persons, embodied in and improved by the majority report, is far better protection to those *whom only we can protect*, than is found in this second section.

Through the operation of this section, and the false oath of a witness before a commissioner, property may be so established in a free man, "of the manor born," that he could be hurried off into eternal slavery, the letter of your law complied with, and your prosecution for kidnapping a free person effectually barred.

That the oath of a villain may thus enslave perpetually a free man, and that villain incur no penalty, when, without this section, no such thing could occur, but, on the contrary, the kidnapper would incur the penalty of a proper law, it but ill becomes the great free State of Ohio to retain such a law, such an inducement upon her statute book.

There can be no question of the existence of this danger, and therefore the safety of freemen as well as the unconstitutionality of the law demands its immediate repeal.

Though it does not in direct terms assail the final absolute right of the owner to reclaim and retake his fugitive slave, yet it is nothing more or less than one of those offensive personal liberty bills in disguise. It is calculated to operate as a stumbling block in the way of honest claimants, surround them with troubles and difficulties, embarrass, perplex and defeat their legal and constitutional rights. It is, as my friend from Hamilton (Mr. Flagg) remarked in his speech a few days since, fuel for northern fire-eaters. It is a tool for depraved abolition judges and perjured officials to work with. It is a rally call for mobs and jail breakers.

Then, sir, we should repeal this statute, in justice, if not to the seceding States, to the border States. It never should

have been placed among the laws of the State of Ohio. And with how much better grace and cleaner hands could we ask a convention of States. The border States demand its repeal. Virginia, the mother of Presidents, the mother of Ohio, calls upon her wayward daughter to be just—to abide faithfully the compromises of that bulwark of American liberty, the Constitution. Let not the call of the venerable and liberal Old Dominion go unheeded.

We have responded to one call—the Peace Conference—by sending to meet her the recipient from negroes of a silver pitcher, written all over with abolitionism, personal liberty bills, negro suffrage, and stuffed full of the Chicago platform—an offensive messenger to a majority of this body—and now in the name of all that is right and just, let us not do further injustice by asking her to meet us in convention, and still refusing to repeal this statute.

The border States, all true to the Union, stretch forth the hand of friendship and love, asking nothing but that justice and equality which was theirs in the early infancy of the Republic; theirs when the fathers of the nation guided the ship of State; theirs to-day if justice be done, if honesty of heart and a proper feeling actuate the action of their northern sister States.

It is nothing short of our duty to repeal this statute, that we may place ourselves right in this great struggle between Union and Disunion. Then if destruction, desolation, disunion and civil war must come, in our consciences we can say we did our whole duty.

But, sir, I do not ask that you should rely upon my poor reasoning; turn to the laws of Congress, turn to the decisions of any court that has touched upon this question, turn to the Constitution itself, and tell me if they are not all unanimous in pronouncing the unconstitutionality of this statute.

The Prigg case I have already cited. To this, Judge McLean dissented; but in 1850, in the circuit court of the United States, in Indiana, in the case of *Norris vs. Newton, et al.*, found in Vol. IX., McLean's Reports, he fully assented to it as

binding, and recognized it as a part of the supreme law of the land.

In *Moore vs. the State of Illinois*, XIV. Howard 20, Mr. Justice Grier says: "The case of *Prigg vs. Pennsylvania*, presented the following questions, which were decided by the court, and approved by this court:

First—That under and in virtue of the Constitution of the United States, the owner of a slave is clothed with entire authority to seize and recapture his slave whenever he can do it without illegal violence, or a breach of the peace.

Second—That any State law or regulation which interrupts, impedes, limits, embarrasses, delays, or postpones the right of the owner to the immediate possession of the slave and the immediate command of his services is void."

In our own State, under a statute of 1831, in effect precisely the same as this one under consideration; the Supreme Court on the circuit, in *Richardson vs. Bebee*, found in Law Reporter, Vol. IX., 318, held and decided: "The Constitution and Laws of the United States recognize slavery, and protect the owner in the enjoyment of this species of property." And further said: "In the case of the *Commonwealth of Pennsylvania vs. Prigg*, the Supreme Court of the United States have decided that the owner of a slave, either by himself or agent, may pursue, arrest and return him to the State from whence he fled, without the aid of the State authority, and that all State legislation which interferes with, or embarrasses such arrest, is unconstitutional and void."

In *Anderson vs. Poindexter, et al.*, VI. O. S. Reports, 622, our Supreme Court most certainly approve the *Prigg* case, as they also did in the case of REMANDING THE PRISONERS in the celebrated *Langston Habeas Corpus* case, in IX., O. S. Reps., 78.

What more authority do we need? Can there longer be a doubt as to the unconstitutionality of this statute! Can there be any question as to our duty in regard to it!

But a fierce howl comes up from abolitionism, mingled with coercionism against its appeal: "It will appear like concession, it will be yielding to the South, it will be deserting the high

stand we have taken, it will be lowering the standard of our politics."

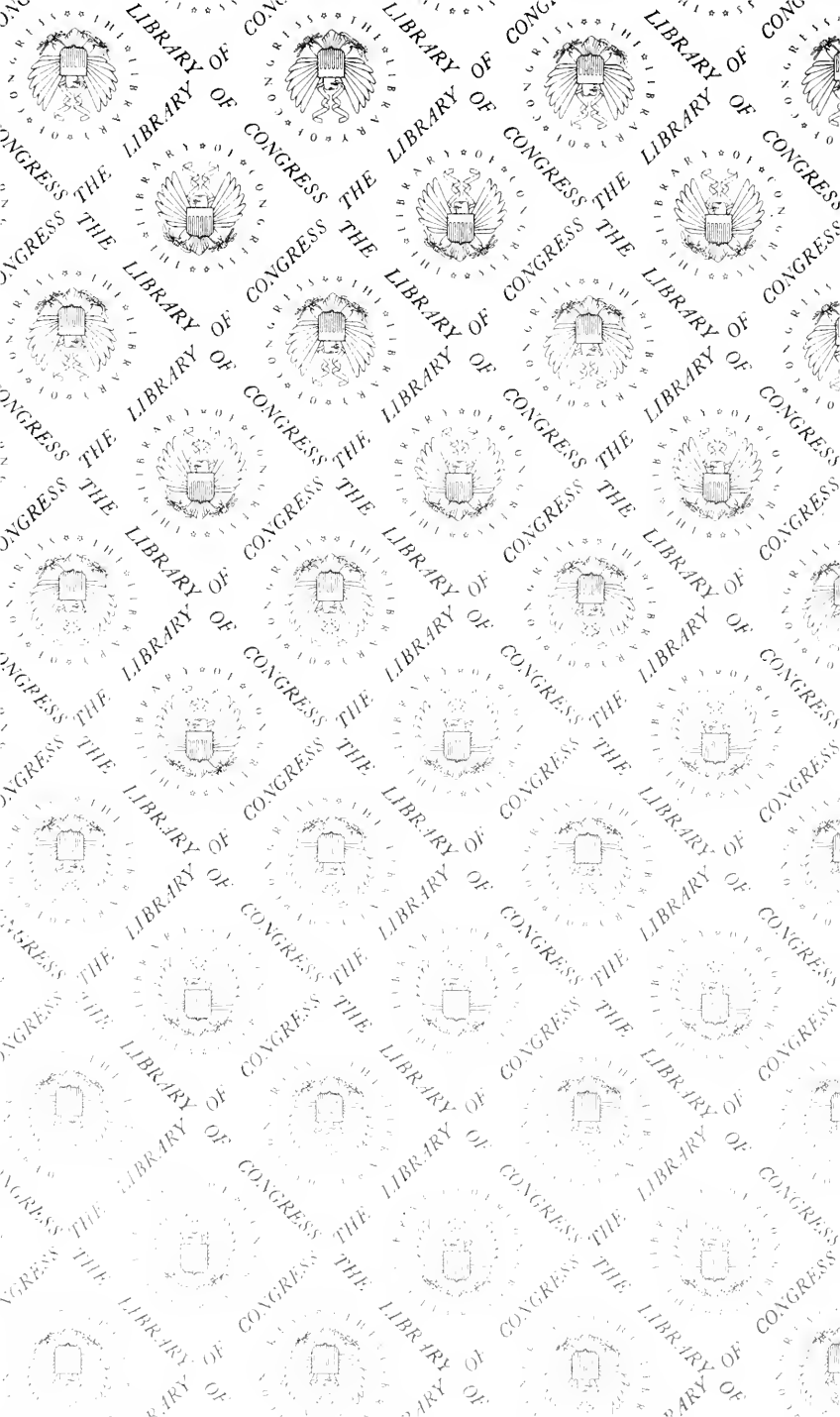
Worse, far worse blind and more obstinate, than the man who contended that the horse was sixteen feet high, because he had said so, for it was not them but Giddings who said it was treason to desert the Chicago platform, and an inflexible determination seems to possess them to stand or fall by what he says.

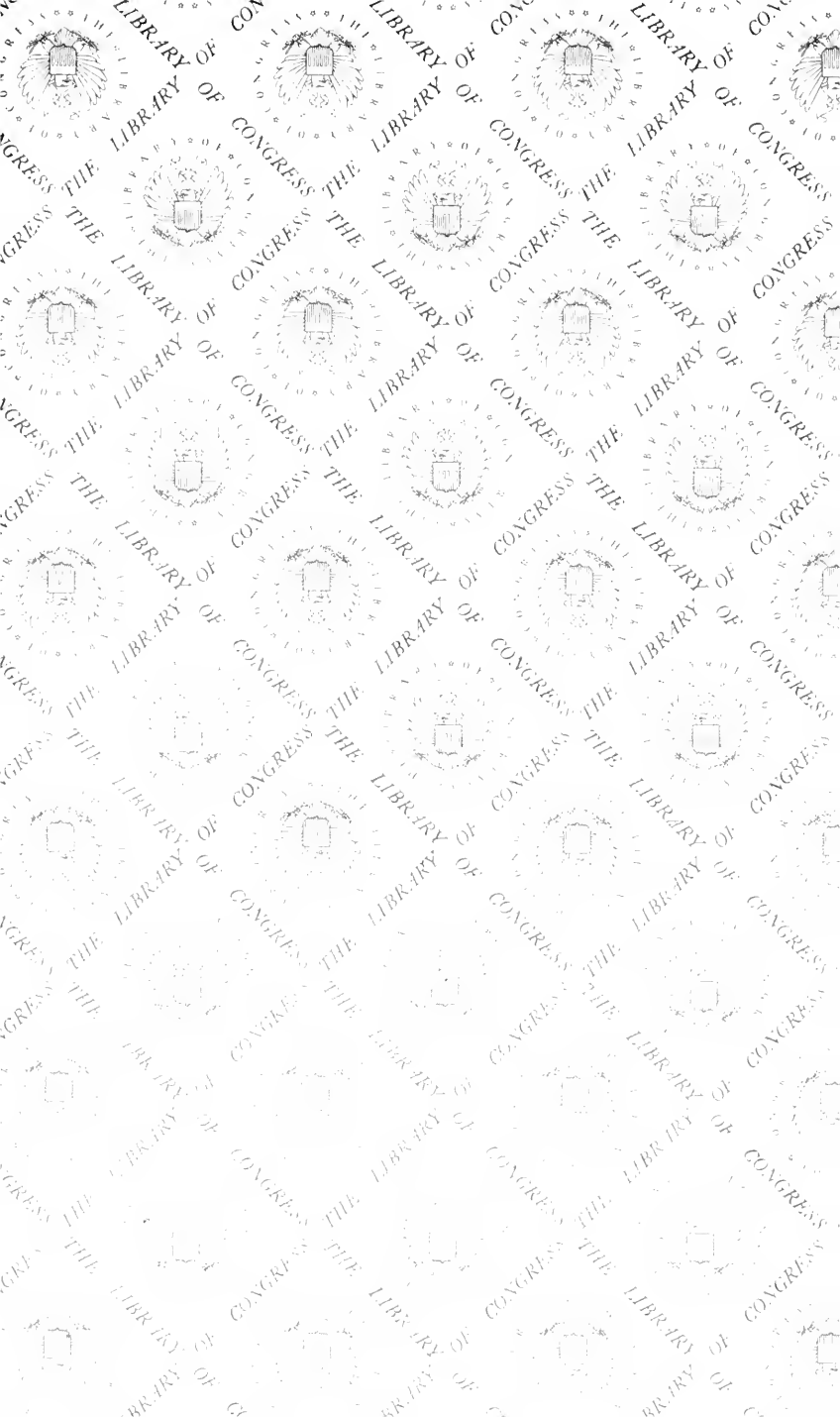
Or perhaps, like the boy up the old man's apple-tree, who peremptorily refused to come down upon request, and until he was heartily pelted with stones, when he was glad to come down and beg the old man's pardon.

Gentlemen, you must come down from your higher law, you must humble yourselves before the Constitution and laws of our common country, and beg their pardon.

Already is a Southern Confederacy in operation. They have inaugurated their President, and are rapidly preparing for a permanent, independent government. They do not want war, but they do want a peaceful dissolution—a separation the cotton States seem determined to have at all hazards, actuated, as they claim, by a desire to preserve rights denied them by the North.

We want neither—we deprecate either. We want the Union of these States preserved. We want that glorious old banner, which has never been unfurled but to victory, to descend to generations yet unborn, unsullied and untorn. It will not answer the purpose to stand upon party platforms now. Times like these demand that all parties should flock to the standard of the Union; that we should, as one man, aim at that high justice which gave us our Constitution; that there should not be a dissenting voice to the repeal of all unconstitutional laws, touching the pandora's box of all our dissensions, nor to the passage of these or similar resolutions in every Union State, and peace again may unfold her wings, and the Union again rest upon that old ark of safety, which has descended to us through many strifes and storms, THE CONSTITUTION.





LIBRARY OF CONGRESS



0 012 026 244 0